

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GENERAL ALUM & CHEMICAL)	
CORPORATION,)	
)	
Plaintiff)	
v.)	Civ. No. 97-0238-B
)	
GENERAL ELECTRIC RAILCAR)	
SERVICES CORPORATION,)	
)	
Defendant/Third-Party Plaintiff)	
)	
v.)	
)	
RESCAR INDUSTRIES, INC.,)	
MRCC, INC., AND)	
PLASITE PROTECTIVE COATINGS,)	
INC.,)	
)	
Third-Party Defendants)	

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

This action arises out of two chemical leaking incidents in Maine, involving railcars Plaintiff, General Alum and Chemical Corp. (“General Alum” or “Plaintiff”), leased from Defendant, General Electric Railcar Services Corp. (“GE Railcar,” “Defendant,” or “Third-Party Plaintiff”). Plaintiff alleges that Defendant agreed to have the railcars lined with a protective material known as Plasite 4100 to enable Plaintiff to transport aluminum sulfate. Because the linings were improperly applied, Plaintiff contends, two of the railcars leaked aluminum sulfate. Defendant filed a Third-Party Complaint against MRCC, Inc. (“MRCC”), Plasite Protective Coatings, Inc. (“Plasite”), and Rescar Industries, Inc. (“Rescar”) for indemnification and/or contribution. Before the Court is a motion brought by Third-Party Defendants MRCC and

Rescar to dismiss the Third-Party Complaint for lack of personal jurisdiction. Third-Party Defendant Plasite has taken no position as to this motion, and has filed an Answer to the Third-Party Complaint. For the reasons set forth below, the Court GRANTS MRCC's and Rescar's motion.

I. BACKGROUND

Plaintiff General Alum, a Maine corporation with its principal place of business in Searsport, Maine, produces and sells, among other things, liquid aluminum sulfate. By agreement dated July 17, 1996, Defendant GE Railcar, a Delaware corporation with its principal place of business in Illinois, agreed to lease to Plaintiff three railcars for shipping Plaintiff's aluminum sulfate. Because liquid aluminum sulfate is a corrosive chemical substance, Defendant agreed to arrange for the railcars to be lined with a protective material known as Plasite 4100, manufactured by Third-Party Defendant Plasite.

While the railcars were supposed to be forwarded to Plaintiff's Maine facility from another company which would apply the lining, the cars were mistakenly shipped directly by Defendant to Plaintiff without first being lined. Thereafter, Defendant arranged for MRCC, a Maryland corporation with its principal place of business in Maryland, to line the cars at its Elk Mills, Maryland facility. After the work was completed MRCC shipped the cars back to Plaintiff's facility in Maine.¹ In general, all work done by "Contract Shops" such as MRCC and Rescar on railcars leased by Defendant is billed by the Contract Shop to Defendant's corporate headquarters. However, once a Contract Shop finishes its work on a given railcar, that car is shipped directly to the end user.

¹ The actual deliveries of the railcars were made by the servicing railroad.

In May, 1997, two of the three railcars Plaintiff leased from Defendant were involved in leaking incidents in Madawaska, Maine while loaded with Plaintiff's aluminum sulfate. The Madawaska Hazardous Materials Team ("Madawaska Haz-Mat") responded to both incidents, and contained the leaks. In late May and early June, 1997, upon Defendant's instructions, Plaintiff shipped all three railcars to Defendant's Pennsylvania facility for inspection. Defendant, in turn, forwarded the cars to the Elk Mills facility. Rescar, a Texas corporation with its principal place of business in Illinois, purchased this facility from MRCC on or about June 30, 1997. Rescar agreed to repair the linings free of charge and shipped the railcars back to Searsport, Maine. In the following months, Plaintiff again complained that the linings on the railcars were failing, and again all three railcars were shipped from Maine to the Maryland facility. Before Rescar could finish repairs on all of the linings, Plaintiff purported to terminate its lease with Defendant. Defendant, in turn, instructed Rescar to halt all repair work and return the railcars to Defendant's Pennsylvania facility.

II. MOTION TO DISMISS

"When a defendant presents to a district court a motion to dismiss for lack of in personam jurisdiction, the court may proceed to adjudication by one or another among several different methods," each involving a different legal standard. Boit v. Gar-Tec Products, Inc., 967 F.2d 671, 674 (1st Cir. 1992). In considering Third-Party Defendants' motion, the Court applies the "prima facie" standard. Under this standard, the Court considers only whether Third-Party Plaintiff "has proffered evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction." Id. at 675. "To defeat a motion to dismiss when the court uses this [prima facie] method the plaintiff must make the showing as to every fact required to

satisfy ‘both the forum’s long-arm statute and the due process clause of the Constitution.’” Id. (quoting U.S.S. Yachts, Inc. v. Ocean Yachts, Inc., 894 F.2d. 9, 11 (1st Cir. 1990)). A plaintiff’s showing of personal jurisdiction must be “based on evidence of specific facts set forth in the record.” Id. However, “[i]n determining whether a prima facie showing has been made, the district court is not acting as a factfinder.” Id. The Court must, for the purposes of this motion, accept “properly supported proffers by a plaintiff as true.” Id.

III. DISCUSSION

“When embarking upon the fact-sensitive inquiry of whether a forum may assert personal jurisdiction over a defendant, the court’s task is not a rote, mechanical exercise.” Sawtelle v. Farrell, 70 F.3d 1381, 1388 (1st Cir. 1995). Rather “[d]ivining personal jurisdiction is ‘more an art than a science.’” Id. (citations omitted). Maine’s long-arm statute provides that it “shall be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the due process clause of the United States Constitution, 14th amendment.” 14 M.R.S.A. § 704-A(1).²

² 14 M.R.S.A. § 704-A provides, in relevant part:

Any person, whether or not a citizen or resident of this State, who in person or through an agent does any of the facts hereinafter enumerated in this section, thereby submits such person, . . . to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of such acts:

- A. The transaction of any business within this State;
- B. Doing or causing a tortious act to be done, or causing the consequences of a tortious act to occur within this State;
-
- I. Maintain any other relation to the State or to persons or property which affords a basis for the exercise of jurisdiction by the courts of this State consistent with the Constitution of the United States.

The central requirement of personal jurisdiction under the Due Process Clause is that “certain ‘minimum contacts’ exist between the defendant and the forum state.” Sawtelle, 70 F.3d at 1388. The First Circuit employs a three-part analysis to determine if there are sufficient contacts to trigger the exercise of specific personal jurisdiction:³

First, the claim underlying the litigation must directly arise out of, or relate to, the defendant’s forum-state activities. Second, the defendant’s in-state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state’s laws and making the defendant’s involuntary presence before the state’s courts foreseeable. Third, the exercise of jurisdiction must, in light of the Gestalt factors, be reasonable.

Id. at 1389. The “Gestalt” factors include: (1) the defendant’s burden of appearing, (2) the forum state’s interest in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief; (4) the judicial system’s interest in obtaining the most effective resolution of the controversy; and (5) the common interests of all sovereigns in promoting substantive social policies. Id. at 1394 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985)).

The Court is satisfied that the claims underlying the litigation arise out of or relate to MRCC’s and Rescar’s Maine contacts. The relatedness requirement is a “flexible, related standard.” Id. at 1389. Third-Party Plaintiff’s Complaint seeks indemnification and/or contribution in connection with two leaking incidents potentially caused by the improper lining

³ The Court may arrive at a finding of personal jurisdiction under a theory of either specific or general personal jurisdiction. Foster-Miller, Inc. v. Babcock & Willcox Canada, 46 F.3d 138, 144 (1st Cir. 1995). “General jurisdiction exists when the litigation is not directly founded on the defendant’s forum-based contacts, but the defendant has nevertheless engaged in continuous and systematic activity, unrelated to the suit, in the forum state.” Id. In this case, general jurisdiction is lacking because there is insufficient evidence in the record that either MRCC or Rescar has engaged in such continuous activity in Maine. The Court’s analysis, therefore, focuses on specific jurisdiction, which “requires weighing the legal sufficiency of a specific set of interactions as a basis for personal jurisdiction.” Id.

of Defendant's railcars with Plasite 4100. Because MRCC applied the Plasite lining to the railcars and sent these cars to Plaintiff's Maine facility, Third-Party Plaintiff's claims arise out of MRCC's Maine contacts. See Smirz v. Fred C. Gloeckner & Co., 732 F. Supp. 1205, 1207 (D. Me. 1990) (holding that third-party plaintiff's claim for indemnification "related" to third-party defendant's contacts with the forum state, where basis of suit was alleged failure of a greenhouse heating system designed by third-party defendant). As the subsequent owner of MRCC's Maryland facility,⁴ Rescar performed repairs on these linings after the leaking incidents. Since Plaintiff continued to have problems with the lining of the railcars after Rescar's repairs and seeks recovery for costs involved with obtaining alternative transport for its liquid aluminum sulfate during this period of time, the relatedness requirement is satisfied as to Rescar as well.

The Court is persuaded, however, that MRCC and Rescar do not have sufficient contacts with Maine such that they should have reasonably anticipated being haled into a court in Maine. The First Circuit has held that merely "placing a product into the stream of commerce with knowledge that the product could end up in the forum state" is insufficient to support personal jurisdiction. Rodriguez v. Fullerton Tires Corp., 115 F.3d 81, 85 (1st Cir. 1997) (citation omitted); see also, Dalmau Rodriguez v. Hughes Aircraft Co., 781 F.2d 9, 15 (1st Cir. 1986).

⁴ "[A]bsent a contrary agreement by the parties, or an explicit statutory provision in derogation of the established common law rule, a corporation that purchases the assets of another corporation in a bona fide arm's-length transaction is not liable for the debts or liabilities of the transferor corporation." Saco River Telegraph & Telephone Co. v. Shooshan & Jackson, Inc., 826 F. Supp. 580, 583 (D. Me. 1993) (citation omitted). In the absence of successor liability, a corporation's contacts with a forum state may not be imputed to its successor. Id. Since Defendant has not presented facts which would support the existence of successor liability between MRCC and Rescar and has not argued that such successor liability exists, the Court will not ascribe MRCC's contacts with Maine to Rescar for the purposes of determining whether Rescar is subject to personal jurisdiction in Maine.

For example, in Dalmau Rodriguez, 781 F.2d at 10-12, the plaintiffs, Puerto Rico residents, filed an action against a helicopter manufacturer, Hughes Aircraft Co. (“Hughes”), for injuries arising out of a crash involving one of two helicopters Hughes had sold to another company (the “seller”) which, in turn, had sold them to the Puerto Rico Police Department. Hughes had previously submitted its own unsuccessful bid to the Puerto Rico Police Department, sent one of its employees to Puerto Rico for technical advice in connection with the helicopters, sent a sales representative to Puerto Rico, and visited Puerto Rico after the accident to investigate. Id. at 15. Nevertheless, the court found Hughes’ contacts with Puerto Rico insufficient to trigger personal jurisdiction. Id. The court specifically rejected the plaintiffs’ argument that Hughes was subject to personal jurisdiction in Puerto Rico because Hughes had knowledge that the two helicopters it sold to a third company would end up in Puerto Rico. The court stated:

We do not think that whether Hughes knew that the helicopters were being sold to the Puerto Rico Police Department has any jurisdictional significance. The test is not knowledge of the ultimate destination of the product, but whether the manufacturer has purposefully engaged in forum activities so it can reasonably expect to be haled into court there, and, even then, the minimum requirements of “fair play and substantial justice” may defeat jurisdiction. Burger King, 471 U.S. at --, 105 S. Ct. at 2185; World-Wide Volkswagen, 444 U.S. at 292, 100 S. Ct. at 564. See Commonwealth of Puerto Rico v. S.S. Zoe Colocotroni, 628 F.2d 652, 667 (1st Cir. 1980). All of the purposeful activities here were initiated and carried on by [the seller]. He contacted Hughes to obtain information necessary to submit a bid and then went to Georgia to facilitate the purchase.

Id. at 15.

In Boit, 967 F.2d at 683, the First Circuit reiterated its rejection of the “stream of commerce” argument in a products liability suit brought by a Maine resident against a nonresident manufacturer of a hot air gun, where the defendant’s only “contact” with Maine was

its alleged act of selling the hot air gun to a catalog followed by the catalog's selling of the gun through the mail to a Maine resident. Id. The court held that the defendant's awareness that its product might end up in the forum state was insufficient to support personal jurisdiction without additional evidence in the record that the defendant "intended to serve the market in Maine." Such additional evidence might include evidence "that [the defendant] designed the product for Maine, advertised in Maine, established channels for providing regular advice to customers in Maine, or marketed the product through a distributor who had agreed to serve as a sales agent in Maine." Id.; see also Fullerton Tires, 115 F.3d at 85 (holding that no personal jurisdiction existed over third-party defendant, a nonresident tire rim manufacturer, whose only contact with Puerto Rico was its knowledge that rims it sold to the defendant in California might end up in Puerto Rico.)

Consistent with the holding in Boit, courts have found the minimum contacts requirement satisfied when, in addition to a party's placement of an item into the stream of commerce, sufficient additional contacts exist between the party and the forum state. For example, in Smirz, 732 F. Supp. at 1206, the Court held that it could exercise personal jurisdiction over the nonresident third-party defendants, in an action arising out of a malfunctioning greenhouse heating system designed by the third-party defendants, and sold by the defendant to the plaintiffs, Maine residents. The Court found the minimum contacts requirement satisfied where the third-party defendants had custom designed the greenhouse heating system for use in Maine, and sent an employee to Maine to fix problems with the heating system. Id. at 1207-08; see also Chester Noyes v. Hunger United States Special Hydraulic Cylinder Corp., No 97-78-B (D. Me. May 13, 1998) (finding exercise of personal jurisdiction over a third-party defendant proper in an action

involving the explosion of a hydraulic cylinder manufactured by the third-party defendant, where the third-party defendant faxed to the plaintiff instructions concerning how to repair the cylinder that eventually exploded).

Here, MRCC's contact with Maine is limited to its act of shipping the railcars from Maryland to Maine, after lining these railcars with Plasite 4100. Rescar's contact with Maine is similarly limited to its act of shipping the railcars to Maine after doing repair work on the linings. In both cases, Defendant arranged for the lining work to be done, and provided instructions as to where the finished railcars were to be shipped. Plaintiff was never billed for the application of the lining; instead, MRCC directly billed Defendant's corporate headquarters in Illinois. The Court is persuaded with respect to both MRCC and Rescar that the isolated act of shipping the railcars to Maine does not represent purposeful availment of the privilege of conducting business in Maine, thereby invoking the benefits and protections of its laws. Rather, the Court finds that as in Hughes, the relevant in-state contacts were initiated by a third party, in this case GE Railcar. See Hughes, 781 F.2d at 15 ("All of the purposeful activities here were initiated and carried on by [the seller].").⁵

The Court is also unpersuaded by GE Railcar's argument that by shipping the railcars to Maine with the knowledge that the cars would be used to transport a corrosive chemical and

⁵ Defendant also cites Coolidge v. Judith Gap Lumber Co., 808 F. Supp. 889, 890-91 (D. Me. 1992), in support of its minimum contacts argument. In Coolidge the court found the exercise of personal jurisdiction appropriate over a nonresident defendant which made a sale of lumber through its sales agent to a Canadian company. The Canadian company requested that the lumber be sent to Maine to be treated, and in the course of unloading the lumber in Maine, the plaintiff was injured. Because the defendant knowingly shipped its lumber to Maine, the court held that the defendant purposefully availed itself of the privilege of conducting business in Maine. Id. at 892. The Court finds Coolidge unpersuasive in light of Hughes.

relying on state and local response teams to limit their potential liability MRCC and Rescar purposefully availed themselves of the privilege of doing business in Maine. As Rescar argues, in all product liability cases manufacturers and other parties know that local police and rescue teams may respond for their benefit. The knowledge that such response teams exist or even the actual benefit provided by these teams, however, does not constitute the type of purposeful availment necessary to support personal jurisdiction. The Court finds, therefore, that MRCC's and Rescar's contacts with Maine are insufficient to trigger specific personal jurisdiction. As a result, the Court does not reach an analysis of the "Gestalt" factors. See Sawtelle, 70 F.3d at 1394 ("a failure to demonstrate the necessary minimum contacts eliminates the need even to reach the issue of reasonableness").

IV. CONCLUSION

Because Third-Party Defendants MRCC and Rescar do not have the minimum contacts with the State of Maine necessary to comport with due process, Third-Party Defendants' Joint Motion to Dismiss for lack of personal jurisdiction is GRANTED.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this ____ day of June, 1998.